

TTAB Update

Gerard F. Rogers

Chief Administrative Trademark Judge

Trademark Trial and Appeal Board

February 9, 2018

UNITED STATES
PATENT AND TRADEMARK OFFICE



FY 2017 TTAB Performance Measures	FY 2017 EOY Results	FY 2018 Actual, Target or Projected	Through Quarter 1 FY2018	Variance
JUDGES and ATTORNEYS				
Administrative Trademark Judges	24	(actuals) 24	23	On target
Interlocutory Attorneys	13.6	14.6	13.6	
FILINGS				
Notices of Appeal	3,158		777	-1.6%
Extensions of Time to Oppose	18,490		4,902	+6%
Notices of Opposition	6,156		1,610	+4.6%
Petitions to Cancel	2,101		596	+13.5%

FY 2017 TTAB Performance Measures	FY 2017 EOY Results	FY 2018 Actual, Target or Projected	Through Quarter 1 FY2018	Variance
PRODUCTION-DECISIONS				
Cases Decided on Merits	649		120	-26%
Precedential Decisions Issued	37	35-40	8	On target
Contested Motions Decided	1,238	(target)	302	-2.4%
Uncontested Motions Processed	32,516		7,952	-2.2%
CUSTOMER SERVICE DESK				
Number of Calls Answered	10,128		2,398	-5.3%
Number of Service Requests	8,852		2,244	+1.4%
Quality of Call Responses	95.24%		97.21%	+1.97%

FY 2017 TTAB Performance Measures	FY 2017 EOY Results	FY 2018 Actual, Target or Projected	Through Quarter 1 FY2018	Variance
<p>PENDENCY- Contested Motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p> <p>(2) Age of <u>single</u> oldest contested motion ready for decision at end of reporting period</p>	<p>7.8 weeks</p> <p>10.7 weeks</p>	<p>(targets)</p> <p>8-9 weeks (avg.)</p> <p>12 weeks or less</p>	<p>7.8 weeks</p> <p>17.9 weeks</p>	<p>Better than target</p> <p>above goal</p>
<p>INVENTORY—Contested Motions Ready for Decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	<p>147</p>	<p>Cases with Motions 145-175 (target)</p>	<p>177</p>	<p>above target range</p>

FY 2017 TTAB Performance Measures	FY 2017 EOY Results	FY 2018 Actual, Target or Projected	Through Quarter 1 FY2018	Variance
PENDENCY- Final Decisions (Cancellations, Oppositions, Ex Parte Appeals) Measured from ready for decision date until mailing for final decisions, excluding precedents, in appeals and trial cases during reporting period	7.8 weeks	10-12 weeks (target)	7 weeks	Better than target
INVENTORY—Cases Ready for Final Decision The number of pending appeals and trial cases in which briefing was completed, or in which briefing and arguments were completed, thus becoming ready for decision on the merits, as of the end of the reporting period	Ex Parte Appeals 65 Oppositions 18 Cancellations 10	Total Case Inventory 130-160 (target)	Ex Parte Appeals 72 Oppositions 14 Cancellations 7	93 cases (Better than target)

FY 2017 TTAB Performance Measures	FY 2017 EOY Results	FY 2018 Actual, Target or Projected	Through Quarter 1 FY2018	Variance
<p>TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents</p> <p>Appeals (489 decided FY17; 93 in FY18)</p> <p>Trial Cases (160 decided FY17; 27 in FY18)</p> <p>ACR Trial Cases (17 decided FY17; 4 issued in FY18 and 3 pending)</p>	<p>38.8 weeks</p> <p>157.2 weeks</p> <p>119.4 weeks</p>		<p>34.3 weeks</p> <p>126.8 weeks</p> <p>107 weeks</p>	<p>-11.6%</p> <p>-19.3%</p> <p>-10.4%</p>

Comments on Protective Order?

- TTAB seeking comments and suggestions through Idea Scale (link to external site on TTAB web page) on Standard Protective Order that went into effect June 24, 2016.
- Comments were due by January 31, 2018.

Recent TTAB Precedents

February 9, 2018

UNITED STATES
PATENT AND TRADEMARK OFFICE



Deadline:

Motion for Judgment on Pleadings

- *Shared, LLC v. SharedSpaceofAtlanta, LLC*, 125 USPQ2d 1143 (TTAB 2017) (Opp. No. 91228478).
- Motion ruled untimely under same rule that requires MSJ to be filed before day of deadline for pretrial disclosures.
- Due date for pretrial disclosures reset.

Clarification in Federal Register

- Clarification Notice at 82 Fed. Reg. 33,804 (July 21, 2017).
- 37 CFR 2.120(e)(1) and (f)(1): motions for summary judgment or to compel discovery must be filed before the day of the deadline for pretrial disclosures for the first testimony period as originally set or as reset, if reset prior to day of the deadline

Deadline: Summary Judgment motion

- *KID-Systeme GmbH v. Türk Hava Yollari Teknik Anonim Sirketi*, __ USPQ2d __ (TTAB 2018) (Opp. No. 91229946; January 12, 2018)
- MSJ filed on deadline day for pretrial disclosures untimely; to be considered by exercise of transition period discretion; but order explains 2.127(e)(1) amendment removed previous discretion to accept untimely motion.

Notice of Reliance: Motion to Strike

- *Azalea Health Innovations, Inc. v. Rural Health Care, Inc.*, 125 USPQ2d 1236 (TTAB 2017) (Opp. No. 91222695).
- Declarations filed for some of PI's employees
- Discovery depositions of these and other employees filed for impeachment
- PI's motion to strike granted; time for oral cross-exam of declarants granted

Future Changes?

February 9, 2018

UNITED STATES
PATENT AND TRADEMARK OFFICE



New Cancellation Proceeding

- May establish a streamlined version of cancellation proceeding for handling abandonment and nonuse claims
- Goal to improve accuracy of the use-based register; responsive to stakeholder requests for option to clear deadwood

New Cancellation Proceeding

- Request for Comments published May 16
- 82 FR 22517 (link on TTAB web page under Stakeholder Outreach)
- Comments received from 13 individuals, firms and stakeholder organizations
- Available on TTAB web page (Stakeholder Outreach)

New Cancellation Proceeding

- Public Meeting held 9/25/17 to review comments and take further comments
- Summary of comments, meeting agenda and transcript of meeting on TTAB website
- Comments still welcome via TTABFRNotices@uspto.gov

Nonuse Cancellation Proceeding

- *Exec. Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d 1175 (TTAB 2017) (Opp. No. 91212312).
- Plaintiff's 2(d) case relied on common-law rights; but defense of abandonment
- Nonuse proven and plaintiff unable to show intent to resume use, thus no priority

Nonuse Cancellation Proceeding

- *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043 (TTAB 2017) (Canc. No. 92057132).
- Four claims included nonuse in commerce at time of filing of Statement of Use
- Plaintiff prevailed on 2(d) claim and no use as of deadline for filing Statement of Use

Nonuse Cancellation Proceeding

- *Titletown Brewing Co., LLC v. Green Bay Packers, Inc.*, (Canc. No. 92063295; January 8, 2018) (not a precedent)
- Claims under 2(d) and of nonuse at time of filing of Statement of Use both alleged, and cross-motions on both claims
- “complex array of disputed facts” so “summary judgment not appropriate”

Nonuse Cancellation Proceeding

- *Tigre Blanc (Luxembourg) SARL v. Ilia Lerner and Amur Spirits Limited*, (Canc. No. 92063561; January 24, 2018) (not a precedent)
- Nonuse alleged, neither at filing of Statement of Use nor at registration
- Defendant's MSJ on claim denied

Nonuse Cancellation Proceeding

- *Local Foods, LLC v. Foodsmith Bowen Osborn* (Canc. No. 92064087; January 26, 2018) (not a precedent) (pro se defendant)
- Plaintiff MSJ on unpleaded abandonment claim; petition amended to add claim, and SJ granted to plaintiff on that claim alone